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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/735,273	12/12/2003	Jean Cotteret	LORE:007US	3600

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EXAMINER
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ELHILO, EISA B

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 08/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/735,273

Applicant(s)

COTTERET ET AL.

Examiner

Eisa B. Elhilo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-49 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-8, 10-11 and 22-49 is/are rejected.
- 7) ☐ Claim(s) 9 and 12-21 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1 This action is responsive to the amendment filed on May 20, 2005.

2 The cancellation of claim 2 is acknowledged. Pending claims are 1 and 3-49.

3 Claims 1,3-8, 10-11, 22-30 and 34-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Laurent et al. (US 2002/0046431 A1) in view of Lim et al. (US 6, 461,391 B1), for the reasons set forth in the previous office action mailed on 11/1/2004.

4 Claims 31-33 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Laurent et al. (US 2002/0046431 A1) in view of Lim et al. (US 6, 461,391 B1) and further in view of Zofchak et al. (US 6,315,991 B1), for the reasons set forth in the previous office action mailed on 11/1/2004.

5 Claims 9 and 12-21 are objected for the reasons set forth in the previous office action mailed on 11/17/2005.

### ***Response to Applicant's Arguments***

6 Applicant's arguments filed 5/20/2005 have been fully considered but they are not persuasive.

With respect to the rejection of the claims under 35 U.S.C. 103(a) over Laurent et al. (US' 431 A1) in view of Lim et al. (US' 391 B1), Applicant argues that there is no motivation or suggestion to combine the references. Further, Applicant argues that the nature of the problem to be solved does not supply a reason, suggestion or motivation to combine the references. Furthermore, Applicant argues that there is no motivation to select tartaric acid from the list of acidifiers in Laurent et al. (US' 431 A1).

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The examiner respectfully disagrees with the above arguments because the use of patents as references is not limited to what the patentees describe as their own inventions or to the problems with which they are concerned. They are part of the literature of the art, relevant for all they contain. "*In re Heck*, 699 F.2d 1331, 1332-33 216 USPQ 1038, 1039 (Fed. Cir. 1983) (quoting *In re Keelson*, 397 F.2d 1006, 1009, 158 USPQ 275, 277 (CCPA 1968)). Further, a reference may be relied upon for all that it would have reasonably suggested to one having ordinary skill in the art, including non-preferred embodiments. *Merck & Co. v. Biocraft Laboratories*, 874 F.2d 804, 807, 10 USPQ2d 1843, 1846 (Fed. Cir. 1989); *In re Fracalossi*, 681 F. 2d 792, 794 n.1, 215 USPQ 569, 570 n.1 (CCPA 1982); *In re Lamberti*, 545 F. 2d 747, 750, 192 USPQ 278, 280 (CCPA 1976); *In re Boe*, 355 F. 2d 961, 965, 148 USPQ 507, 510 (CCPA 1966). In this case Laurent et al. (US' 431 A1) as a primary reference teaches a composition comprising oxidation bases of para-phenylenediamine compounds having a heterocyclic radical (see page 10, formula (1) and page 11, paragraph, 0270) and organic diacid compound such as tartaric acid (see page 22, paragraph, 0476). Lim et al. (US' 391) as a secondary reference clearly teaches the claimed formula (I) (see col. 2, formula (1)). It is further taught by Lim et al. (US' 391 B1) that the quaternized pyrrolidine compounds are suitable primary intermediates for hair coloring compositions for providing good oxidative coloration of hair such as light fastness, fastness to shampooing, fastness to permanent wave treatment and suitable for providing a wide variety of different color shades with various primary intermediate and coupler compounds (see col. 2, lines 13-20). Therefore, there is a sufficient motivation to a person of the ordinary skill in the art to be motivated to substitute para-phenylenediamine oxidation bases of Laurent et al. by the cationic tertiary para-phenylenediamines of Lim et al., with the reasonable expectation of

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success for providing good oxidation coloring of hair. Further, tartaric acid is taught by the reference under the acidifying agents that classically used in the dyeing composition (see page 22, paragraph, 0476), and, thus, it would have been obvious to one having ordinary skill in the art to select any classical organic acid includes tartaric acid. Therefore, the rejection is proper and the prima facie case of obviousness has been established.

With respect to the rejection of the claims under 35 U.S.C 103(a) over Laurent et al. (US' 431 A1) in view of Lim et al. (US' 391 B1) and further, in view of Zofchak et al. (US 6,315,991 B1), Applicant argues that there is no motivation to combine the references because Laurent et al. (US' 431 A1) disclosed no long chain dicarboxylic acids. Further, the applicant argues that the equivalency between malic acid (C4) and dilinoleic acid (C36) disclosed by Zofachak et al. (US' 991 B1) is improper.

The examiner respectfully disagrees with the above arguments because Laurent et al. (US' 431 A1) as a primary reference clearly suggests the use of organic acids (carboxylic acids) which are not limited to those disclosed (see page 22, paragraph, 0476). Zofchak et al. (US' 991 B1) as a secondary reference clearly teaches a cosmetic composition comprising preferred mixture of polycarboxylic acids containing C2-C50 dicarboxylic acids that include malic acid, dilinoleic acid, citric acid and tartaric acid (see col. 10, lines 53-65). Therefore, there is a sufficient motivation to one having ordinary skill in the art to be motivated to select and use any of those organic acids as taught by Zofachak et al. (US' 991 B1) as an acidifying agent in the dyeing composition of Laurent et al. (US' 431 A1) in the absent of contrary. Therefore, the prima facie case of obviousness has been established.

Any inquiry concerning this communication or earlier communications from the

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examiner should be directed to Eisa B. Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -5:30) with alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Eisa Elhilo  
Patent Examiner  
Art Unit 1751

July 29, 2005